IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1045 of 2000

P.Veeramuthu .. Appellant

vs.

State by
Inspector of Police,
Vigilence and Anti Corruption
Salem (Cr.No.1/AC/Spel.91) .. Respondent

Prayer: This Criminal Appeal has been filed under section 374 of Cr.P.C. preferred against the judgment passed by the learned Special Judge and I Additional District Judge-Cum-Chief Judicial Magistrate, Salem in Spl.C.C.No.98 of 1991 dated 20.10.2000, whereby, convicting the appellant by imposing one year Rigorous Imprisonment and a fine of Rs.1,000/- for the alleged offence under Sections 7 and 13(2) read with 13(1) (d) of Prevention Corruption Act under each section in default to undergo Rigorous imprisonment for three months for each sentence.

For Appellant : Mr.R.John Sathyan
For Respondent : Mr.V.R.Balasubramanian, Addl.P.P.

O R D E R

This appeal has been preferred against the Judgment in Spl.C.C.No.98 of 1991 on the file of the learned Special Judge and First Additional District Judge-Cum-Chief Judicial Magistrate, Salem.

2. The short facts of the prosecution case is that on 23.01.1991 at about 8.45 p.m., the accused being a Sub-Inspector of Police of Mecheri Police Station demanded and received illegal gratification of Rs.500/- from the complainant namely Manoranjitham Ammal for initiating proceedings against the accused in Mecheri Police Station Crime No.29 of 1991 under Section 324 of Indian Penal Code. The accused has been charged under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

3. On appearance of the accused on summons, copies of documents under Section 207 of Criminal Procedure Code were furnished to the accused and when the accused was questioned about the charges levelled against him, he

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pleaded not guilty.

4. On the side of the Prosecution P.W.s 1 to 14 were examined. Exs.P1 to P19 were exhibited and M.Os. 1 to 9 were marked. P.W.1 is the sanctioning authority, who had issued Ex.P1 sanction against the accused for prosecution, while he was working as Deputy Inspector General of Police, Vellore range in the year 1991. He would depose that he has been empowered to appoint, and dismiss a Sub-Inspector of Police. On 04.04.1991, he received the documents connected with R.C.7/91 from the Directorate of Vigilance and Anti Corruption connected with the then Sub-Inspector of Police Thiru Veeramuthu, who is the accused herein. On perusal of those records, he came to know that the accused had demanded Rs.500/- from one Manoranjitham Ammal, the complainant in a criminal case and after going through the entire records and after getting himself satisfied as to a Prima Facie case has made out against the accused accorded sanction for prosecution against the accused on 09.04.1991 under Ex.P1.

5 . P.W.2 Manoranjitham Ammal, the complainant has not supported the case of the prosecution and hence she was treated as a hostile witness. But she would admit that the signature contained in the complaint belongs to her. Ex.P4 is the signature in Ex.P3 belongs to her.

4. P.W.3 is the trap witness. According to him, on 23.01.1991, while he was working as a Cashier in the Co-operative Regional Agricultural Office at Trichy, at about 4.45 p.m. as per the request made by the superior officer, he proceeded to the Directorate of Vigilance and met the Inspector of Police, P.W.13, Asokan. P.W.13 had introduced to him P.W.2 Manoranjitham Ammal, the brother of her father-in-law viz. Perumal, P.W.4 and another witness from Education Department by name Paneer Selvam. P.W.13 gave the complaint, First Information Report for his perusal and accordingly he perused those documents and he has also ascertained about the facts narrated in the complaint from P.W.2 and P.W.4. P.W.13, Inspector of Police ascertained from P.W.2 whether she had brought the amount. P.W.2 answered in the affirmative and produced Rs.500/- in the denomination of Rs.100 - 4 Notes and Rs.50/- - 2 Notes. Thereafter, the Inspector of Police prepared Sodium Carbonate Solution in a glass tumbler and also handed over the currency notes produced by P.W.2 to note down the numbers in a paper and accordingly he had noted down the currency note numbers in a paper. He has identified the said currency notes as M.O1 Series. P.W.13 had instructed him (P.W.3) to count the currency notes and then to dip his fingers in the solution already prepared by him in the glass tumbler. When he did so, there was no change found in the solution. Thereupon, he smeared the phenolpthalein powder which was brought by the Head Constable over the currency notes and also on M.O.2 cover produced by P.W.2. Again P.W.3 was asked by P.W.13 Inspector of Police to count the currency notes and then to dip his fingers in the Sodium Carbonate solution. When he did so, the solution became pink in colour. The Inspector of Police had packed a sample of Phenolpthalein powder separately and affixed his seal and assigned letter 'A' (M.O.3) and

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assigned letter 'B" to the cover containing Sodium Carbonate powder (M.O.4) and the bottle containing the Sodium Carbonate Solution was sealed and assigned the letter "S.1" which is (M.O.5).

5. After explaining the importance of the said test to the witnesses who have assembled there, P.W.13 Inspector of Police handed over the currency notes amounting to Rs.500/- to P.W.2 Manoranjitham Ammal and instructed her to hand over the same to accused Veeramuthu at Mecheri Police Station on demand and after the receipt of the money by the accused, the Inspector had instructed P.W.2 to come out of the room and to give a signal by hooding the head with her saree.

6. Ex.P5 is the Mahazar prepared by P.W.13 in which P.W.2 has signed at the last page of it. The Ex.P5 Mahazar was prepared from 5 p.m to 6.30 p.m. Afterwards all the witnesses and the Inspector have washed their hands and left the office at about 6.45 p.m. P.W.13 and P.W.2 went in a car and the others came to Mechery in a public conveyance. All reached at about 7.30 p.m. P.W.13 had directed P.W.2 Manoranjitham Ammal and the brother of her father-in-law Perumal to go to the Mecheri Police Station ahead of other witnesses. Accordingly, after they left for the police station, P.W.3 along with the Inspector of Police P.W.13 and other witnesses reached Mecheri Police Station at about 7.45 p.m., where P.W.2 was informed that the Sub-Inspector is not in the station and had gone to bandobust duty and he is expected in the station at about 8.00 or 8.30 p.m.. So all of them waited at Primary health centre.

7. At about 8.30 p.m a jeep entered into the compound of the police station. Accused Veeramuthu got down from the jeep along with two police officials. On seeing P.W.2, the accused enquired whether she had brought the money. P.W.2 answered in the affirmative. Accused had informed her that Inspector of Police has come and after his departure she can hand over the money to him. The said jeep left at about 8.15 p.m and 15 minutes later, the accused came out from the writer's room and asked P.W.2 whether she had brought the amount in a cover and received the cover containing money from P.W.2. After receiving the cover, the accused went near the room of the writer and opened the cover and checked whether it contains currency notes. Thereafter, he placed the cover containing ill-gotten money in his left side pant pocket and turned to P.W.2 and asked her to go away from there, with an assurance that he will look after the criminal case. The accused has also asked P.W.3 and Perumal to go away without turning to his side and accordingly they left the police station without turning to his side and when they moved about 25 feet from the police station, P.W.2 has given a signal by hooding her head with her saree.

8. On seeing the signal, P.W.13, Asokan, the other witness Paneer Selvam and police men entered into the police station at about 8.55 p.m. The Inspector P.W.13 had sent out P.W.2 Manoranjitham Ammal and her relative Perumal. P.W.13, P.W.3 and Paneer Selvam went inside the police station and on seeing them, accused stood up and wished the Inspector in a

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perturbed mood. The Inspector of Police had introduced him to the accused and also introduced P.W.3 and other witness to the accused.

9. Thereafter, P.W.13 prepared Sodium Carbonate Solution in two glass tumblers and asked the accused to dip his right hand and left hand separately in the said solution. When the accused did so, the colour of the solution became pink in both the containers. The solution in which the right hand of the accused was dipped was marked as 'S2' which is M.O.6. The solution in which the accused had dipped his left hand was marked as 'S3' which is M.O.7. P.W.13 asked the accused to produce the ill-gotten money received from P.W.2 and accordingly the accused took out the cover containing the ill-gotten money from his left side of the pant pocket. The said cover contained the denomination of Rs.100 - 4 Notes and Rs.50/- - 2 Notes. The Inspector had asked him to check the number of the currency notes with that of the numbers noted by him in a separate paper in the vigilance office and the Inspector had also seized the pant worn by the accused at the time of occurrence and dipped the left side of the pant pocket into another Sodium Carbonate Solution which also turned pink in colour. The said solution was assigned 'S4' and sealed separately. The said bottle is M.O.8. M.O.9 is the pant. Thereafter, Ex.P6 Mahazar was prepared by the Inspector between 9 p.m and 10.50 p.m in which P.W.3, the other witness Paneerselvam and the Inspector of Police, Asokan, P.W.13 have signed in each and every page. The accused was arrested by P.W.13 at about 10.40 p.m and has also seized Ex.P7 pocket note book of the accused. Ex.P8 is the F.I.R. Copy connected with Crime No.21 of 1991 of Mecheri Police Station. Ex.P9 is the General Diary of the year 1991 relating to Ex.P7 case. Exs.P7 to P9 were recovered when Ex.P6 Mahazar was prepared. Ex.P10 is the rough sketch prepared by the Inspector for the place of occurrence in which also P.W.3 and other witness have signed. The house of the accused was also searched between 12.00 midnight and 12.15 a.m, but nothing was seized. Ex.P.11 is the house search list. Afterwards, they returned to Directorate of Vigilance, Salem.

10. P.W.4, Perumal, the relative of P.W.2 has not supported the case of the prosecution. Hence he was treated as a hostile witness by the learned public prosecutor.

11. P.W.5, Inspector of Police, took up investigation in Mecheri Police Station Crime No.21 of 1991 under Section 324 of Indian Penal Code. On receipt of the First Information Report on 18.01.1991, he had arrested the accused connected with Crime No.21 of 1991 on 20.01.1991 and instructed the Sub-Inspector of Police/accused to submit the Case Diary and General Diary during his inspection on 21.01.1991 of the Mecheri Police Station and also he had left note to the Sub-Inspector of Police/accused to proceed with the investigation without further delay. After attending to temple bandobust duty on 23.01.1991, P.W.5 went to Mecheri Police station on 23.01.1991 at about 5.30 p.m in his Jeep bearing Registration No.T.T.M.3115 and reached the police station at about 6.00 p.m and instructed the Sub-Inspector of Police, Veeramuthu and the Head

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Constable Sivarajan, who has been called from medical leave to go to attend to temple bandobust duty at Amaram Village. Ex.P12 is the General Diary of Mechery Police station. Ex.P.13 is the xerox copy of Case Diary relating to Crime No.21 of 1991. He had submitted both Exs.P.12 and P.13 along with Ex.P14 to the Investigating Officer in this case. Ex.P7 is the notebook maintained by the accused Veeramuthu, which contains entries up to 8.00 p.m on 23.01.1991. Ex.P9 is the General Diary pertaining to Mecheri Police Station.

12. P.W.6 is the then Grade I constable of the Mecheri Police Station. He would depose that on 23.01.1991 at about 7.45 p.m, a lady along with an aged person came to Mecheri Police station and waited there to see the Sub-Inspector of Police till 8.00 pm. P.W.7 is the then Head Constable of Mecheri Police Station. He would depose that during the relevant period, the accused was the Sub-Inspector of Police at Mecheri Police Station and that he was on medical leave for ten days from 22.01.1991 and as per the directions of the Inspector of Police, he joined duty on 23.01.1991 at about 6.00 p.m and as per the direction of the Inspector of Police, he along with the Sub-Inspector of Police, Veeramuthu went for Kamatchi Amman Temple duty on the same day at about 6.15 p.m and he along with the Sub-Inspector of Police returned to Mecheri Police Station at about 7.45 p.m along with the Inspector of Police in his Jeep and that after giving necessary instructions regarding the temple bandobust duty, the Inspector of Police left the police station at about 8.15 p.m. At that time, he saw a lady along with 4 or 5 persons waiting at the Writer's room. When Inspector of Police was in the Mecheri Police Station, the Sub-Inspector of Police, Veeramuthu came to the room of the Writer and also made entries in the General Diary.

13. P.W.8 is the driver who drove the jeep of the Inspector of Police on 23.01.1991, he would corroborate the evidence of P.Ws 5,6 and 7. P.W.9 is the then Head Clerk of Chief Judicial Magistrate Court, Salem. Ex.P15 is the letter of requisition given by P.W.14 to forward the material objects connected with this case to the Forensic Science Laboratory, Chennai with a Court's requisition letter Ex.P.16. Ex.P17 is the Analyst Report dated 30.01.1991.

14. P.W.10 is the then Constable of Mecheri Police Station who would depose that on 14.01.1991 at about 7.00 p.m, while he was in the Police Station after attending to his duty, the Sub-Inspector of Police Veeramuthu came to the Police Station and asked him to record the statement of the complainant and to register the case under Crime No.21 of 1991 and accordingly he did so and Ex.P8 is the First Information Report and after preparing the First Information Report, he submitted the same before the Sub-Inspector of Police. P.W.11 is the Assistant in Judicial Magistrate Court No.5, Salem. During 1992, he was the Assistant in Judicial Magistrate Court, Mettur. According to him, First Information Report relating to Mecheri Police Station Crime No.21 of 1991 reached Judicial Magistrate No.2, Mettur on 24.01.1991 at 1.30 pm. Ex.P18 is the letter addressed to Inspector of Police, Vigilance and Anti Corruption

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Department, Salem.

15. P.W.13 is the Investigating Officer. On the basis of the complaint preferred by P.W.2, he had registered a case in Vigilance and Anti Corruption Case Number 1/A.Se/91 under Section 7 of the Prevention and Corruption Act, 1988. Ex.P19 is the First Information Report. He narrates how he secured the independent witnesses for a trap and also about the preparation of Sodium Carbonate solution for the trap and also explaining about the Phenolphthalein test to the witnesses and after handing over the decoy amount to P.W.2, instructed her to meet the accused at Mecheri Police Station and also speaks about Mahazar Ex.P5 prepared by him for the demonstration of Phenolphthalein test to the witnesses. After sending P.W.2 and her relatives, P.W.13 went in the office car to Mecheri Police Station and asked the other police officials to come in the bus and they reached the Mecheri Police Station at about 7.30 p.m and instructed P.W.2, her relative Perumal and the trap witness Noor Ahamed Khan P.W.3 to Mecheri Police Station and instructed them to meet the Sub-Inspector of Police and he along with other witnesses was waiting 25 feet away from the Police Station expecting the signal from P.W.2 as instructed by him earlier. After getting the signal from P.W.2 as instructed by him, he along with other witness and policemen went inside the Mecheri Police Station and saw the accused sitting in the chair facing West and no one else was present in his room. In the writer's room Writer Meiyalagan and Head Constable Sivaraj were in the uniform. Apart from them, Alagammal, Murugesan, Raja and Ravindran were also found sitting in the writer's room. After introducing himself to the Sub-Inspector of Police/accused and also the witnesses, he prepared Sodium Carbonate Solution in two glass tumblers and asked the accused to dip his fingers in both the hands into the said solution. When he did so, the solution turned into pink in colour. The said solution was collected in a bottle and sealed and assigned letter "S2" which is M.O.6 and the bottle containing the solution in which accused had dipped his left hand finger was assigned the letter "S3" which is M.O.7 and on the label pasted over those bottles, he and other witnesses have signed. Noor Ahamed Khan, P.W.3, Assistant has identified the accused as the person who had received the ill-gotten money from P.W.2. The accused has produced the cover from his left pant pocket which contained the denomination of Rs.100/- - 4 Notes and Rs.50/- - 2 Notes. He has compared the number in the currency notes with that of the numbers noted in a paper from the currency notes at his office and found both the number tally. M.O.1 series are the said currency notes. He had also recovered the Kakki pant from the accused and prepared another Sodium Carbonate Solution and dipped the left side pant pocket into the said solution and found the solution turned into pink in colour, which was collected in a separate bottle and assigned letter "S4" which is M.O8. On the label, he and other witnesses have also put their initials. M.O.9 is the pant which was worn by the accused at the time of occurrence. He has also recovered M.O.7, the note book maintained by the accused. M.O.8 is the docket sheet relating to Mecheri Police Station Crime No.21 of 1991. M.O9 is the General Diary of the Mecheri Police Station. He has prepared Ex.P6 Mahazar between 9 p.m and 10.45 p.m. The

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accused was arrested by him at 10.40 p.m. Ex.P10 is the rough sketch prepared by him in the presence of the witnesses. He has examined the witnesses and recorded their statement. He has conducted house search of the accused between 12.15 to 12.45 a.m, but no incriminating object was seized from his house. Ex.P.11 is the house search list. The accused was released on bail on 24.01.1991 at about 1.30 am with a direction to appear before the Chief Judicial Magistrate on 01.02.1991 and he has submitted the material objects connected with this case to the Magistrate Court under Form 95 on 25.01.1991 and handed over the case records to his successor Murugasamy as per the directions of his higher officials.

16. P.W.14 is the Investigating Office,r who is the successor of P.W.13, who had examined the witnesses and recorded their statement and gave requisition to the Court to send the material objects for Forensic Science Laboratory for medical examination. After getting sanction for prosecution against the accused, he filed the charge sheet on 13.05.1991 under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

17. When incriminating circumstances were put to the accused, the accused would deny his complicity with the crime. After going through the oral and documentary evidence, the learned Trial judge has held that the prosecution has proved the guilt of the accused under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and accordingly convicted and sentenced the accused to undergo Rigorous Imprisonment for one year under Section 7 and also one year Rigorous Imprisonment under Section 13(2) read with 13(1)(d) besides a fine of Rs.1,000/- under each section, in default to undergo Rigorous Imprisonment for three months under each section and the learned Trial Judge has ordered the sentence to run concurrently. Aggrieved by the findings of the Trial Judge, the accused has preferred this appeal.

18. POINT: The point for determination in this appeal is whether the findings of the learned Trial Judge holding the accused guilty under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 warrants any interference from this Court for the reasons stated in the Memorandum of Appeal?

19. I have heard Mr.R.John Sathyan, learned counsel appearing for the appellant as well as Mr. V.R.Balasubramanian, learned counsel appearing for the respondent and considered their rival submissions.

20. The learned counsel appearing for the appellant Mr.R.John Sathyan would focus the attention of this court to the evidence of P.W.2, who is the decoy witness in this case, on whose complaint entire edifice of the prosecution case has been built up, has not supported the case of the prosecution, and would contend that the conviction of the Trial Court based on the evidence of P.W.3 cannot be considered as an independent witness, but only trap witness and it cannot be sustainable.

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21. In support of this contention, the learned counsel appearing for the appellant would rely on Som Parkash, V. State of Punjab (1992 CRI.L.J.490). The short facts of the said case is that:

> "The appellant was a Head Master of a Government high school. He was tried for accepting an illegal gratification from a teacher of the same school for showing favour in signing a bill relating to the arrears of his salary. The Special Judge after considering the evidence led on behalf of the prosecution held the appellant to be guilty for offence under Section 5(2) of Prevention of Corruption Act and Section 161 of the Indian Penal Code. He was convicted and sentenced to rigorous imprisonment for two years under both the counts which were to run concurrently. Besides, a fine of Rs.500/- was also imposed on him. In appeal, the substantive sentence of imprisonment on both the counts was reduced to one year R.I. ordered to run concurrently and the fine was maintained.
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> The High Court on appeal found that the witnesses who were associated in the conduct of the raid for recovery of tainted money from the appellant could not be termed as independent witness and accordingly drove the adverse inference against the appellant from the circumstance and on overall assessment, the High Court entertained some suspicion about the credibility of the prosecution witnesses but at the same time did not find the suspicion to be strong enough to raise doubt about the guilt of the appellant. On that score, it confirmed the findings of the lower Court which necessitated the accused to knock at the door of the Apex Court of India. The Honourable Apex Court of India has held that the High Court after coming to the conclusion that no credibility can be attached to the prosecution witness, at the same time did not find the suspicion to be strong enough to raise doubt about the guilt of the appellant which is held unsustainable and accordingly allowed the appeal and the accused was set at liberty."

22. But that is not the case herein. Even though P.W.2 was turned hostile, there is no reason assigned by the appellant to disbelieve the evidence of P.W.3, a trap witness.

23. The learned counsel also placed his reliance on R.C.Mehta Vs.The State of Punjab (1971) SCC (Cri.) 574 for the same proposition of law.

24. The learned public prosecutor placed his reliance on Hazari Lal V. The State (Delhi Admn.) AIR 1980 SC 873, wherein it has been held by Apex Court that the trap laid down by the Police Officer is found reliable than on the evidence of the Police Officer alone, the conviction is maintainable and corroboration for his evidence is not necessary. The short facts of the above case are as follows:

> "The scooter-rikshaw belong to Sri Ram (P.W.3) was driven by his driver Ram Lubhaya (P.W.6) was involved in an accident on

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July 12, 1969. The scooter-rickshaw and a tonga which were involved in the accident were taken to the Police Station, Kashmere Gate by the accused, a police constable attached to that station. P.W.3 obtained orders from the Magistrate for the release of his vehicle and went to the Police Station to obtain delivery of the vehicle. The accused, who was present took him outside and told him that the vehicle would be given to him only if he paid a bribe of Rs.60/-. P.W.3 then went away. He went to the Anti Corruption Department and made statement to Inspector of Police P.W.8. After recording the statement of P.W.3, P.W.8 had sent for two persons Davindar Kumar (P.W.4) and Kewal Krishnan. The statement of P.W.3 was read out to P.W.3 in the presence of the two Panch witnesses Davinder Kumar and Kewal Krishnan. P.W.3 then produced six currency notes of the value of Rs.10/- each. The numbers of the notes were noted and they were treated with phenolphtalein powder. After the usual instructions were given to the P.W.3 and the panch witnesses, the raiding party proceeded towards Kashmere Gate. P.W.3 and P.W.6 and Kewal Krishnan went into the Police Station, while P.W.8 and others stayed outside. The money was handed over to the accused who took it and put it inside the right hand pocket then came out and signalled to P.W.8 whereupon P.W.8 and the Panch witnesses went inside the Police Station. After conducting Phenolphthalein test, the accused was arrested, before, P.W.4 one of the Panch witnesses has not supported the case of the prosecution in its entirety. On this evidence of P.W.3 and P.W.8, both the learned Sessions Judge as well as the High Court found the accused guilty and convicted and sentenced.

25. It was contended on the side of the accused that relying on the 161 statement of witnesses, the Court below have convicted the accused which is not in accordance with law. It has been held by the Apex Court that "after excluding irrelevant material we are left with the evidence of P.W.8 and that of P.W.4 whose evidence corroborates that of P.W.8 in several material particulars. We, however wish to say that the evidence of P.W.8 is entirely trustworthy and there is no need to seek any corroboration. We are not prepared to accept the submission of Shri Frank Anthony that he is the very Police officer who laid the trap should be sufficient for us to insist upon corroboration. We do wish to say that there is no rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case, the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard

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and fast rule, nor can there be any precedential guidance." Ultimately, the Apex Court dismissed the appeal.

26. Learned Additional Public Prosecutor would also place his reliance on M.Narsinga Rao V. State of A.P.(2001 SCC (Cri) 258) wherein, the same principles laid down in AIR 1980 SC 872 has been followed and wherein it has been held that :

> 13.The expressions "may presume" and "shall presume" are defined in Section 4 of the Evidence Act. The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 20(1) of the Act must have the same import of compulsion.
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> 14. When Section 20(1) deals with legal presumption it is to be understood as in terrorem i.e in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused had accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence.

27. The learned counsel for the appellant would contend that according to P.W.13 even the cover in which the bribe amount of Rs.500/- was kept also was treated with Phenolphthalein powder and that even according to P.W.2 she was asked to hand over the wound certificate relating to the criminal case under Crime No.21 of 1991 to the accused who was the Sub-Inspector of Police in Mecheri Police Station at that time. In this connection, I am reminded of an addage "Men may lie but not the circumstance".

28. If the evidence of P.W.2 (Hostile - decoy witness) that she only handed over the cover containing the wound certificate is true then there is no necessity for the accused to open the cover or to meddle with the cover because he is not going to do anything with the wound certificate of the witness in Crime No.21 of 1991. In this connection, the evidence of P.W.3, the trap witness is important to be noted. According to P.W.3, as soon as P.W.2 handed over the cover containing the bribe amount, the accused received the cover and proceeded towards the writer's room and opened the same and also counted the currency notes and then put the cover with the ill-gotten money inside his left pant pocket.

29. Contrary to this fact, at the time of 313 questioning, the accused would say that the witness P.W.2 kept the cover on the table. In

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the complaint, Ex.P2, it is the definite case of P.W.2 the complainant is that the accused instructed her to bring the bribe amount only in a cover.

30. The Trial Court after meticulously scanning down each and every piece of evidence, both oral and documentary has come to a conclusion that the guilt against the accused under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 has been proved, which does not require, in my opinion, any interference from this Court.

31. Now, the only point remains to be resolved in this appeal is whether the conviction and sentence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 can be maintainable?.

32. Basing his reliance on State Represented by Inspector of Police, Pudukottai, T.N. Vs. A.Parthiban, (2007 1 SCC (Cri) 520), the learned Public Prosecutor would contend that accused is liable to be convicted under Section 7 and also under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. There cannot be two opinion about the conviction. The point is whether the accused can be sentenced under Section 7 as well as under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The relevant observation of the Apex Court in the above said dictum, in my opinion is relevant and worthwhile to be noted, which runs as follows:

> "Every acceptance of illegal gratification, whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13 (1)(d) of the Act. The offence being a single transaction, but falling under two different sections, the offender cannot be liable for double penalty. But the High Court committee an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(d) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court award to the person for any one of the two offences. In this case, minimum punishment under Section 7 is six months and the minimum punishment under Section 13(1)(d) and the court wants to award only the minimum punishment, then the punishment would be one year."

33. Under such circumstances, following the above ratio, I am of the opinion that the accused even though is liable to be convicted under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 is liable to be punished only under one of the above provision of law only under Section 13(2) read with 13(1)(d) to undergo one year

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rigourous punishment. The point is answered accordingly.

34. In the result the appeal is dismissed confirming the Judgment of the learned Special Judge in Spl.C.C.No.98 of 1991 on the file of Special Judge and First Additional District Judge-cum-Chief Judicial Magistrate, Salem. The accused is convicted under Sections 7 and 13(2) read with 13 (1)(d) of the Prevention of Corruption Act, 1988. But the sentence of the Trial Court alone is modified and the accused is sentenced to one year Rigorous Imprisonment under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, instead one year Rigorous Imprisonment each under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The fine imposed under Section 7 of the Prevention of Corruption Act, 1988 shall be refunded to the accused, but the fine imposed under Section 13(2) read with 13(1)(d) by the Trial Judge shall sustain. The Trial Court is directed to secure the accused and send him to prison to undergo the unexpended portion of the sentence.

svki

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The learned Special Judge and
I Additional District Judge-Cum-Chief Judicial Magistrate,
Salem.

2.The Inspector of Police,
State of Tamilnadu,
Vigilence and Anti Corruption,
Salem (Cr.No.1/AC/Spel.91)

3.The public prosecutor
High Court, Chennai

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